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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/376,794	08/18/1999	RAINER KROPKE	BEIERSDORF-5	6931

7590 05/07/2003

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NEW YORK, NY 10017

EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/07/2003

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/376,794

Applicant(s)

Kropke

Examiner

Gollamudi Kishore

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 5, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: :1615

DETAILED ACTION

The request for the extension of time, filing under 1.114 and the preliminary amendment dated 3-5-03 are acknowledged.

Claims included in the prosecution are 18-23.

Claim Rejections - 35 U.S.C. § 103

- 1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 2. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited previously, in view of Jordan (5,885,617).**

EP, Magdassi and FR disclose emulsion compositions containing chitosan and phospholipid (note the abstract, Tables and claims of EP; columns 5 and 8 and claims of Magdassi; note Examples on page 11 and the English translation of FR).

What is lacking in EP is the specific recognition that the lecithin present is known for its anti-tack property. EP does not explicitly state the molecular weight and the degree of deacylation. Assuming they are different, the reference clearly teaches that these

Art Unit: :1615

polysaccharides stabilize the emulsions and that chitosans with different molecular weights and degree Of deacylation are readily available in the market (page 2).

Similarly Magdassi does not specifically teach that the phospholipids in the composition reduces the tackiness of the composition. Magdassi does not specifically teach the molecular weight and the degree of deacylation. As pointed out above, it is deemed obvious to one of ordinary skill in the art to use a specific chitosan in the teachings of Magdassi with the expectation of obtaining similar results. An artisan would be motivated to use any chitosan since EP shows that these are readily available in the market.

FR does not specifically teach that the phospholipids reduce the tackiness of the composition.

Jordan while disclosing pharmaceutical compositions teaches that lecithin is known to be an anti-tack agent (note col. 2, lines 51-58).

It would have been obvious to one of ordinary skill in the art that lecithin present in the compositions of EP, Magdassi or FR would reduce the tackiness of the compositions since Jordan teaches that lecithin is a known anti-tack agent. Based on the same reasoning one of ordinary skill in the art would expect lecithin to reduce the tackiness of composition irrespective of the compound contributing to the tackiness, in instant case, chitosan, its molecular weight and the degree of dacetylation.

Art Unit: :1615

3. **Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited above, in view of either JP 63211208 or JP 03074316, further in view of Jordan cited above.**

The teachings of EP, Magdassi and FR which teach emulsions containing the phospholipids and chitosan have been discussed above. It would have been obvious to one of ordinary skill in the art that the compositions of EP, Magdassi and FR are non-tacky since both JP references teach that the phospholipid containing cosmetic compositions are non-sticky (note the abstracts) and Jordan teaches that lecithin is a known anti-tack agent.

Applicant's arguments have been fully considered, but are not found to be persuasive in view of these new rejections.

The reference of Nikoloff (4,766,105) which teaches that phospholipids alleviate sticking has already been cited of interest.

Art Unit: :1615

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Application/Control Number: 09/376,794

Page 6

Art Unit: :1615

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.



Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

May 5, 2003